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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,859	05/13/2005	Kei Hara	033036.089	9083
25461 7590 12/16/2008 SMITH, GAMBRELL & RUSSELL SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30309-3592				
EXAMINER MARCECICH, ADAM M				
ART UNIT		PAPER NUMBER		
3761				
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12/16/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/534,859

**Applicant(s)**

HARA, KEI

**Examiner**

Adam Marcetich

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 8-11, 13, 15, 16 and 18 is/are rejected.  
7) ☒ Claim(s) 12, 14 and 17 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 13 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 26 June 2008, 13 May 2005  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II, claim(s) 8-18 in the reply filed on 11 September 2008 is acknowledged. The traversal is on the ground(s) that independent claims 1 and 8 recite a lock and lock body, respectively, which provide disengagement of hooks, so as to release the compressed spring by a force acting upon the lock member without moving the two plates. Applicant notes that Blake lacks a lock wherein the lock member is different from the plates, since latch hooks, 35a and 35b, of the latch, 35 extend from the interior sections of plates, This is not found persuasive because the basis for the restriction requirement is based on the limitation of a flexible bag with two plates for supporting the bag and a spring put between the plates, taught by Blake. In other words, this feature is anticipated by prior art.

The requirement is still deemed proper and is therefore made FINAL. Claims 1-7 are withdrawn, and claims 8-18 are examined on the merits.

### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). A certified copy of parent Application No. 2002-363656, filed on 16 December 2002 in Japan has been received.

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3. A priority date of 16 December 2002 is given to claims 1-18 since no new matter has been added and the claims are supported by parent application 2002-363656 filed in Japan.

### ***Specification***

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract is objected to for exceeding 150 words. Appropriate correction is required.

### ***Claim Objections***

6. Claims 11 and 12 are objected to because of the following informalities: the language "shell part" and "core part" should be changed to "first or second shell part" and "first or second core part" in each instance as appropriate for proper antecedent basis. In other words, it is important to clearly claim which shell or core part, the first or second, is being claimed. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 8-11, 13, 15, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Blake; Larry W. et al. (US 4429693).

9. Regarding claims 8 and 16, Blake discloses a body fluid suction reservoir comprising:

a bag element having a fluid collecting port for taking in body fluid (col. 6, lines 47-65, Fig. 2, bag 40 having fluid collection tube 42);

a first plate and a second plate arranged in the bag element so as to face each other (cols. 5-6, lines 67-5, Fig. 1, plates 10a, 10b facing each other);

an elastic member disposed between the first plate and the second plate (col. 6, lines 47-60, Fig. 2, spring 14); and

a lock body attached to the second plate (col. 6, lines 27-34, Fig. 7, having latch hook 36b in combination with hinged connection 30 attached to plate 10b );

wherein the lock body comprises a hook part and an operation part for displacing the hook part (col. 6, lines 27-34, Figs. 3, 7, plate 10b comprising latch hook 36b and hinged connection 30 );

the hook part is adapted to engage with a hook engagement surface of the first plate to fix the first plate and the second plate (col. 6, lines 35-46, latch hook 36b engaging hook 36a);

so that the elastic member is compressed and held between the first plate and the second plate (Fig. 7, spring 14 between plates 10a, 10b), and

the operation part is operated to displace the hook part in parallel with a surface of the second plate, so that fixing of the first plate and the second plate are released to generate negative pressure in the bag element (col. 8, lines 11-27, especially lines 23-27, disengagement separating plates 10).

10. Regarding claim 9, Blake discloses a body fluid suction reservoir characterized in that

the lock body is elastically deformable (col. 8, lines 11-27, Figs. 3a, 3b, deforming at hinges 17a, and 17b);

a part of the lock body is fixed to the second plate (Fig. 7, latch hook 36b and hinged connection 30 attached to plate 10b);

thereby the operation part is operated so as to displace at least the hook part in parallel with the surface of the second plate, and the hook part returns to an initial position after the operation (col. 8, lines 11-27, especially lines 23-27, disengagement separating plates 10).

11. Regarding claim 10, Blake discloses a body fluid suction reservoir characterized in that

at least one of the first plate and the second plate comprises a cutout portion (col. 6, lines 27-34, Fig. 1, slots 28), and

the operation part is located in the cutout portion or in correspondence with the cutout portion (col. 6, lines 27-34, Figs. 1, 3a, 3b, hinged connection 30 corresponding with slots 28),

so as to be positioned inside an outline of the body fluid suction reservoir (Figs. 1, 3a, 3b, hinged connection 30 and slots 28 within bag 40).

12. Regarding claims 11 and 13, Blake discloses a body fluid suction reservoir wherein:

[11, 13] the first plate comprises a first shell part forming a part of an outline of the body fluid suction reservoir (Fig. 1, plate 10a having tabs outside of hinges 17a); and

[11, 13] a first core part provided on a side of the first shell part facing the second plate (Fig. 1, plate 10a having face facing spring 14, especially recess 38a);

[11, 13] the second plate comprises a second shell part forming a part of the outline of the body fluid suction reservoir (Fig. 1, plate 10b having tabs outside of hinges 17b); and

[13] a second core part provided on a side of the second shell part facing the first plate (Fig. 1, plate 10b having face facing spring 14, especially recess 38b between hinges 17b);

[11] at least a part of the lock body is located on a side of the second shell part facing the core part (Fig. 1, hook 36b between hinges 17b);

[11, 13] so that the elastic member is compressed and held by the core part and at least the part of the lock body (col. 6, lines 35-46, Fig. 7, spring 14 held between plates 10a, 10b within recesses 38a, 38b).

13. Regarding claim 18, Blake discloses a body fluid suction reservoir wherein:  
the bag element comprises a fluid evacuate port for evacuating the body fluid (col. 6, lines 61-65, Fig. 2, drain tube 43);

a lid for the fluid evacuate port (col. 7, lines 3-7, Fig. 2, plug/stopper 47); and

a suspension hole or a holding part attachment hole (col. 7, lines 8-18, Fig. 2, flange 48 between tubes 42 and 43 having hole); and

the lid for the fluid evacuate port is provided with a holding part to be held by the suspension hole or the holding part attachment hole (Fig. 2, flange 48 opposite tubes 42 and 43 having hole capable of holding plug/stopper 47 by expanded end; the flared edge of plug/stopper 47 is interpreted as the claimed holding part);

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:



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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blake; Larry W. et al. (US 4429693).

17. Regarding claim 15, Blake discloses the invention substantially as claimed, see above. However, Blake lacks at least two hook parts as claimed [claim 15]. With respect to the claimed two hook parts, the MPEP 2144.04(VI)(B) requires an invention made through duplication of parts to have a “new” and “unexpected” result for patentability. The claimed invention lacks these qualities. It is well known in the art that providing additional hooks, fasteners or clasps provides redundancy and additional fastening force. Therefore, the duplication of hook parts does not provide a “new” and “unexpected” result. To clarify, adding a second pair of hooks does not provide patentability, since adding a second pair would further fasten plates 10 together.

***Allowable Subject Matter***

18. Claims 12, 14 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

◆ Longo; Richard et al.	US 5885261
◆ Cunningham; Robert W. et al.	US 5588958
◆ Felix; Augustus et al.	US 5496299
◆ Olson; Daniel H.	US 5275585
◆ Winkler; Duane K. et al.	US 5112323
◆ Bopp; Jeffrey S. et al.	US 4981474
◆ Gerow; Frank J.	US 4957487
◆ Weilbacher; Eugene E. et al.	US 4529402

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Marcetich whose telephone number is 571-272-2590. The examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/  
Examiner, Art Unit 3761

/Leslie R. Deak/  
Primary Examiner, Art Unit 3761  
15 December 2008